



DX 380 Melbourne
Level 7/380 St Kilda Road
Melbourne VIC 3004
Australia

Telephone: +61 3 9694 2888
Facsimile: +61 3 9694 2880
Website: www.tollgroup.com

9 June 2009

Mr John Hawkins
Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hawkins

I am writing regarding the proposed amendments to section 23AG of the *Income Tax Assessment Act*. We understand that you are receiving submissions for the committee hearing tomorrow.

Please find attached the Toll Group's recent submission to the Australian Treasury. We would be grateful if the Toll Group's concerns are included as part of the committee's considerations.

We are happy to provide further information as necessary and wish the committee well in its deliberation.

Yours sincerely

A handwritten signature in black ink, appearing to read "Andrew Ethell".

Andrew Ethell
General Manager
Group Corporate Affairs
andrew.ethell@tollgroup.com
03 9694 2890



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Level 7/380 St Kilda Road
Melbourne VIC 3004
Australia

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4 June 2009

Mr Greg Wood
The Manager
International Tax Unit
International Tax and Treaties Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Wood

We are writing on behalf of the Toll Group to put forward our concerns in relation to the proposed amendments to section 23AG of the *Income Tax Assessment Act*. We are particularly focusing on how these proposed changes will undermine Toll businesses acting in the national interest to provide critical operational support to Australian Government and UN agencies.

Background

One of the Toll Group's subsidiaries, PDL Toll, is a leading provider of integrated logistics support services to major Government (and commercial) organisations including the Australian Defence Force and the Australian Federal Police. PDL Toll is at the heart of these agencies' operations in Timor Leste and the Solomon Islands. PDL Toll is also a significant supplier of logistics services to the United Nations. A range of existing and pending contracts are likely to be very seriously undermined by the proposed changes.

What are we seeking?

We welcome the Australian Government's willingness to consult on the impact of the proposed changes. We support the submissions from Moore Stephens and KPMG (attached) about the value to Australian business and Australian expert professionals to the current arrangements.

However, we believe there is another vital element the Government should consider relating specifically to businesses like PDL Toll. We believe that Australian tax residents who are working for Australian headquartered companies providing logistics services in support of recognised Australian or UN operations overseas should be exempt from the changes. We have included some examples and further argumentation below.

Timor Leste

The Australian Defence Force (ADF) has deployed to Timor Leste with a mission to assist the Timor Leste Government to bring stability, security and confidence to the nation.

The ADF has chosen PDL Toll as their comprehensive logistics provider and the Australian Defence Force requires Australian citizenship for certain key personnel.

Some of the services we deliver in Timor Leste include:

- Catering and accommodation
- Cleaning and laundry services
- Fleet and camp maintenance

- Supply chain and procurement
- Medical and dental
- Inbound and outbound travel
- Rotary wing aviation
- Fuel procurement, storage and handling

Solomon Islands

PDL Toll provides integrated logistics support to the Australian Government through the AFP contingent deployed as part of the Regional Assistance Mission in the Solomon Islands (RAMSI).

Integrated logistics means taking care of all of the day-to-day needs of personnel, from feeding them to providing medical care and emergency support services.

- We support more than 400 people each day in the Solomon Islands, and
- We are a significant employer of local people in the Solomon Islands

PDL Toll is on the ground supporting the united regional coalition of police and military forces. We operate out of the RAMSI base in Honiara and provide the police and troops with all their logistics requirements. From garrison support functions, to medical and dental services, catering, engineering services, vehicle maintenance, aviation and international passenger and cargo services – we provide it all.

Support for the Royal Australian Navy and the US Navy

PDL Toll is also providing a raft of logistics services as well as providing husbandry services to the Royal Australian Navy and the US Navy which are critical to any Navy operation. The type of services vary from providing pilots, tugs and berths for vessels to providing provisions, location briefings and tourism activities for the crew.

United Nations

PDL Toll provides support to the United Nation's Department of Peacekeeping Operations (DPKO) in a range of countries. This support is always provided for operations under a relevant Status of Forces Agreement (SOFA). Support would include (but not be limited to) the following: consultancy services for international defence forces moving in and out of theatre and fuel resupply for forces in theatre.

For example, PDL Toll is currently assisting units of the defence force of Sierra Leone deploy to Chad under a UN SOFA.

Toll Group concerns

- The Treasurer's Media Release on 12th May 2009 provides a very narrow range of circumstances where the exemption under section 23AG will continue to apply and fails to recognise the fact that certain businesses which provide critical operational support to relevant Government and UN organisations in Australia and abroad, rely on the exemption to attract staff to work in difficult environments and conditions;
- It is difficult to mount an argument that employees working in environments of serious hardship alongside Defence, AFP and UN personnel under a Status of Forces Agreement where they are often exposed to risk for their personal safety are obtaining an "unfair" advantage over workers in Australia who earn income and pay tax in Australia. The proposed amendments unfairly compromise the important work being done by Australian companies under these circumstances. It is unreasonable, under the proposed circumstances, for PDL Toll to tender for overseas Government projects providing valuable assistance to developing and war-torn countries in locations that are extremely volatile and personnel are at high personal risk. For UN contracts in particular, the proposal has the potential to reduce employment for Australia citizens at the expense of the engagement of foreign citizens.

- If the amendments proceed, the cost of providing these integral services to the Commonwealth and UN will need to increase. As such the savings in tax will be offset by increased costs to the Commonwealth from third party service providers increasing their contract rates to reflect the extra cost of sending Australian employees offshore.
- There needs to be more consideration given to broadening the exemption to include employees of critical third party contractors providing services to relevant Government organisations undertaking projects which are in the national interest such as support services to the ADF, AFP and UN;
- There are a number of existing Interpretative Decisions and Class Rulings which specifically exempt (under Section 23AG) employees of the AFP and ADF respectively, however there is a failure to recognise that employees of critical logistical and technical service providers to Government organisations in volatile and high risk countries, would be denied under the proposed amendments, the ability to benefit from the exemption which appears both unfair and unreasonable;
- If the reforms are enacted as they unfairly stand, then the existing section 23AF needs to be broadened to not be reliant on an overseas project receiving approval by the Minister of Trade, rather projects of national interest. Some attempt to define national interest should be made. The Government needs to appreciate that there are a number of external services providers supporting Government organisations undertaking projects in the national interest. There appears no logical reason why employees of such third party services providers should be denied the benefit of an Australian tax exemption if they are working in a similar environment of volatility and risk to a "specified Government employee" or "Government aid worker".

We note that a number of leading CA firms have made submissions to the International Tax Unit regarding these amendments. We enclose again the submissions by KPMG and Moore Stephens. While we support the general points they make, this submission on behalf of Toll Group is intended to focus on the particular problems the proposed amendments would make to PDL Toll as it acts to support operations being undertaken in the national interest under SOFAs for the UN or Australian Government.

We are happy to provide further information to you as necessary and look forward to receiving further updates on Section 23AG developments.

Yours sincerely



Andrew Ethell
 General Manager
 Group Corporate Affairs
andrew.ethell@tollgroup.com
 03 9694 2890



Bruno Galgano
 General Manager
 Taxation
bruno.galgano@tollgroup.com
 03 9694 2823